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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 81

Introduced by Assembly Member Torrico
(Principal coauthor: Assembly Member Garcia)
(Coauthors: Assembly Members DeVore, Hayashi, Horton,
Krekorian, Silva, Spitzer, and Strickland)
(Coauthor: Senator Romero)

December 4, 2006

An act to amend Section 1255.7 of the Health and Safety Code, and to amend Section 271.5 of the Penal Code, relating to child protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as amended, Torrico. Child protection: safe surrender.

Existing law designates certain locations as safe-surrender sites for the safe surrender of newborn children who are 72 hours of age or younger.

This bill would expand the scope of those provisions to apply to children who are ~~21~~ 7 days old or younger. The bill would permit a local fire agency, upon the approval of the appropriate local governing body of the agency, to designate a safe-surrender site. The bill would

specify certain circumstances in which a safe-surrender site and its personnel have no liability for a surrendered child.

~~The bill would require safe-surrender site personnel to provide to the parent or other individual, as specified, who is surrendering custody of the child, with information regarding alternative options to surrender, as specified.~~ The bill would also require, to the extent resources are available, as specified, the State Department of Social Services to conduct a statewide awareness campaign publicizing the existence of the program and to establish a toll-free telephone number for the purpose of providing education and assistance to the public regarding the program.

By imposing new duties on local officials, the bill would impose a state-mandated local program.

The bill would require the State Department of Social Services to report to the Legislature regarding the effect of these provisions on or before January 1, 2011.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1255.7 of the Health and Safety Code is
2 amended to read:
3 1255.7. (a) (1) For purposes of this section, “safe-surrender
4 site” means any of the following:
5 (A) A location designated by the board of supervisors of a
6 county, or by a local fire agency upon the approval of the
7 appropriate local governing body of the agency, to be responsible
8 for accepting physical custody of a minor child who is ~~21~~ 7 days
9 old or younger from a parent or individual who has lawful custody
10 of the child and who surrenders the child pursuant to Section 271.5
11 of the Penal Code. Before designating a location as a safe-surrender
12 site, the designatory entity shall consult with the governing body

1 of a city, if the site is within the city limits, and with representatives
2 of any local fire agency and any child welfare agency that may
3 provide services to a child who is surrendered at the site, if that
4 location is selected.

5 (B) A location within a public or private hospital that is
6 designated by that hospital to be responsible for accepting physical
7 custody of a minor child who is ~~24~~ 7 days old or younger from a
8 parent or individual who has lawful custody of the child and who
9 surrenders the child pursuant to Section 271.5 of the Penal Code.

10 (2) For purposes of this section, "parent" means a birth parent
11 of a minor child who is ~~24~~ 7 days old or younger.

12 (3) For purposes of this section, "personnel" means any person
13 who is an officer or employee of a safe-surrender site or who has
14 staff privileges at the site.

15 (4) A hospital and any safe-surrender site designated by the
16 county board of supervisors or by a local fire agency upon the
17 approval of the appropriate local governing body of the agency,
18 shall post a sign utilizing a statewide logo that has been adopted
19 by the State Department of Social Services that notifies the public
20 of the location where a minor child ~~24~~ 7 days old or younger may
21 be safely surrendered pursuant to this section.

22 (b) Any personnel on duty at a safe-surrender site shall accept
23 physical custody of a minor child ~~24~~ 7 days old or younger pursuant
24 to this section if a parent or other individual having lawful custody
25 of the child voluntarily surrenders physical custody of the child to
26 personnel who are on duty at the safe-surrender site. Safe-surrender
27 ~~site personnel shall provide to the parent or other individual having~~
28 ~~lawful custody of the child information regarding alternative~~
29 ~~options to surrender, including, but not limited to, voluntary~~
30 ~~relinquishment, foster care, and adoption, and, if the parent or~~
31 ~~other individual chooses to utilize an alternative option, shall~~
32 ~~provide information that to parent or other individual regarding~~
33 ~~appropriate resources relevant to exercising the alternative option~~
34 ~~or options selected. If the parent or other individual having lawful~~
35 ~~custody of the child chooses to continue with the safe surrender~~
36 ~~of the child, the safe-surrender site personnel shall ensure that a~~
37 ~~site personnel shall ensure that a~~ qualified person does all of the
38 following:

39 (1) Places a coded, confidential ankle bracelet on the child.

1 (2) Provides, or makes a good faith effort to provide, to the
2 parent or other individual surrendering the child a copy of a unique,
3 coded, confidential ankle bracelet identification in order to facilitate
4 reclaiming the child pursuant to subdivision (f). However,
5 possession of the ankle bracelet identification, in and of itself, does
6 not establish parentage or a right to custody of the child.

7 (3) Provides, or makes a good faith effort to provide, to the
8 parent or other individual surrendering the child a medical
9 information questionnaire, which may be declined, voluntarily
10 filled out and returned at the time the child is surrendered, or later
11 filled out and mailed in the envelope provided for this purpose.
12 This medical information questionnaire shall not require any
13 identifying information about the child or the parent or individual
14 surrendering the child, other than the identification code provided
15 in the ankle bracelet placed on the child. Every questionnaire
16 provided pursuant to this section shall begin with the following
17 notice in no less than 12-point type:

18 NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY
19 MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE
20 THAT WE DON'T KNOW ABOUT TODAY. SOME
21 ILLNESSES, INCLUDING CANCER, ARE BEST TREATED
22 WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES.
23 IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR
24 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY
25 WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE
26 IN COMPLETING THIS QUESTIONNAIRE FULLY IS
27 ESSENTIAL. THANK YOU.

28 (c) Personnel of a safe-surrender site that has physical custody
29 of a minor child pursuant to this section shall ensure that a medical
30 screening examination and any necessary medical care is provided
31 to the minor child. Notwithstanding any other provision of law,
32 the consent of the parent or other relative shall not be required to
33 provide that care to the minor child.

34 (d) (1) As soon as possible, but in no event later than 48 hours
35 after the physical custody of a child has been accepted pursuant
36 to this section, personnel of the safe-surrender site that has physical
37 custody of the child shall notify child protective services or a
38 county agency providing child welfare services pursuant to Section
39 16501 of the Welfare and Institutions Code, that the safe-surrender
40 site has physical custody of the child pursuant to this section. In

1 addition, any medical information pertinent to the child's health,
2 including, but not limited to, information obtained pursuant to the
3 medical information questionnaire described in paragraph (3) of
4 subdivision (b) that has been received by or is in the possession
5 of the safe-surrender site shall be provided to that child protective
6 services or county agency.

7 (2) Any personal identifying information that pertains to a parent
8 or individual who surrenders a child that is obtained pursuant to
9 the medical information questionnaire is confidential and shall be
10 exempt from disclosure by the child protective services or county
11 agency under the California Public Records Act (Chapter 3.5
12 (commencing with Section 6250) of Division 7 of Title 1 of the
13 Government Code). Any personal identifying information that
14 pertains to a parent or individual who surrenders a child shall be
15 redacted from any medical information provided to child protective
16 services or the county agency providing child welfare services.

17 (e) Child protective services or the county agency providing
18 child welfare services pursuant to Section 16501 of the Welfare
19 and Institutions Code shall assume temporary custody of the child
20 pursuant to Section 300 of the Welfare and Institutions Code
21 immediately upon receipt of notice under subdivision (d). Child
22 protective services or the county agency providing child welfare
23 services pursuant to Section 16501 of the Welfare and Institutions
24 Code shall immediately investigate the circumstances of the case
25 and file a petition pursuant to Section 311 of the Welfare and
26 Institutions Code. Child protective services or the county agency
27 providing child welfare services pursuant to Section 16501 of the
28 Welfare and Institutions Code shall immediately notify the State
29 Department of Social Services of each child to whom this
30 subdivision applies upon taking temporary custody of the child
31 pursuant to Section 300 of the Welfare and Institutions Code. As
32 soon as possible, but no later than 24 hours after temporary custody
33 is assumed, child protective services or the county agency
34 providing child welfare services pursuant to Section 16501 of the
35 Welfare and Institutions Code shall report all known identifying
36 information concerning the child, except personal identifying
37 information pertaining to the parent or individual who surrendered
38 the child, to the California Missing Children Clearinghouse and
39 to the National Crime Information Center.

(f) If, prior to the filing of a petition under subdivision (e), a parent or individual who has voluntarily surrendered a child pursuant to this section requests that the safe-surrender site that has physical custody of the child pursuant to this section return the child and the safe-surrender site still has custody of the child, personnel of the safe-surrender site shall either return the child to the parent or individual or contact a child protective agency if any personnel at the safe-surrender site knows or reasonably suspects that the child has been the victim of child abuse or neglect. The voluntary surrender of a child pursuant to this section is not in and of itself a sufficient basis for reporting child abuse or neglect. The terms “child abuse,” “child protective agency,” “mandated reporter,” “neglect,” and “reasonably suspects” shall be given the same meanings as in Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(g) Subsequent to the filing of a petition under subdivision (e), if within 14 days of the voluntary surrender described in this section, the parent or individual who surrendered custody returns to claim physical custody of the child, the child welfare agency shall verify the identity of the parent or individual, conduct an assessment of his or her circumstances and ability to parent, and request that the juvenile court dismiss the petition for dependency and order the release of the child, if the child welfare agency determines that none of the conditions described in subdivisions (a) to (d), inclusive, of Section 319 of the Welfare and Institutions Code currently exist.

(h) A safe-surrender site, or the personnel of a safe-surrender site, shall not have liability of any kind for a surrendered child prior to taking actual physical custody of the child. A safe-surrender site, or personnel of the safe-surrender site, that accepts custody of a surrendered child pursuant to this section shall not be subject to civil, criminal, or administrative liability for accepting the child and caring for the child in the good faith belief that action is required or authorized by this section, including, but not limited to, instances where the child is older than ~~21~~ 7 days old or the parent or individual surrendering the child did not have lawful physical custody of the child. A safe-surrender site, or the personnel of a safe-surrender site, shall not be subject to civil, criminal, or administrative liability for a surrendered child prior to the time that the site or its personnel know, or should know, that

1 the child has been surrendered. This subdivision does not confer
2 immunity from liability for personal injury or wrongful death,
3 including, but not limited to, injury resulting from medical
4 malpractice.

5 (i) (1) In order to encourage assistance to persons who
6 voluntarily surrender physical custody of a child pursuant to this
7 section or Section 271.5 of the Penal Code, no person who, without
8 compensation and in good faith, provides assistance for the purpose
9 of effecting the safe surrender of a minor ~~21~~ 7 days old or younger
10 shall be civilly liable for injury to, or the death of, the minor child
11 as a result of any of his or her acts or omissions. This immunity
12 does not apply to any act or omission constituting gross negligence,
13 recklessness, or willful misconduct.

14 (2) For purposes of this section, “assistance” means transporting
15 the minor child to the safe-surrender site as a person with lawful
16 custody, or transporting or accompanying the parent or person
17 with lawful custody at the request of that parent or person to effect
18 the safe surrender, or performing any other act in good faith for
19 the purpose of effecting the safe surrender of the minor.

20 (j) For purposes of this section, “lawful custody” means physical
21 custody of a minor ~~21~~ 7 days old or younger accepted by a person
22 from a parent of the minor, who the person believes in good faith
23 is the parent of the minor, with the specific intent and promise of
24 effecting the safe surrender of the minor.

25 (k) Any identifying information that pertains to a parent or
26 individual who surrenders a child pursuant to this section, that is
27 obtained as a result of the questionnaire described in paragraph
28 (3) of subdivision (b) or in any other manner, is confidential, shall
29 be exempt from disclosure under the California Public Records
30 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
31 of Title 1 of the Government Code), and shall not be disclosed by
32 any personnel of a safe-surrender site that accepts custody of a
33 child pursuant to this section.

34 SEC. 2. Section 271.5 of the Penal Code is amended to read:

35 271.5. (a) No parent or other individual having lawful custody
36 of a minor child ~~21~~ 7 days old or younger may be prosecuted for
37 a violation of Section 270, 270.5, 271, or 271a if he or she
38 voluntarily surrenders physical custody of the child to personnel
39 on duty at a safe-surrender site.

(b) For purposes of this section, “safe-surrender site” has the same meaning as defined in paragraph (1) of subdivision (a) of Section 1255.7 of the Health and Safety Code.

(c) (1) For purposes of this section, “lawful custody” has the same meaning as defined in subdivision (j) of Section 1255.7 of the Health and Safety Code.

(2) For purposes of this section, “personnel” has the same meaning as defined in paragraph (3) of subdivision (a) of Section 1255.7 of the Health and Safety Code.

SEC. 3. On or before January 1, 2011, the State Department of Social Services shall report to the Legislature regarding the effect of this act, including, but not limited to, all of the following information:

(a) The number of children one year of age or younger who are found abandoned, dead or alive, in the state for each year in which reporting is required under this act.

(b) The number of infants surrendered pursuant to this act, with their approximate age.

(c) The number of medical history questionnaires completed in those cases.

(d) The number of instances in which a parent or other person having lawful custody seeks to reclaim custody of a surrendered child, both during and after the initial period following surrender, and the outcome of those cases.

(e) Whether a person seeking to reclaim custody is the individual who surrendered the child.

(f) The number of children surrendered pursuant to this act who show signs of neglect or abuse and the disposition of those cases.

(g) The number of parents or legal guardians eventually located and contacted by social workers.

SEC. 4. To the extent resources *that have been* appropriated to the State Department of Social Services are available for these purposes, the department shall do both of the following:

(a) Conduct a statewide awareness campaign publicizing the existence of the program providing safe-surrender sites as described in Section 1255.7 of the Health and Safety Code and related provisions of law, and any changes to the law establishing the program that take effect on or after January 1, 2008. *When outreach materials regarding the program are revised, those materials shall*

1 *include information regarding alternatives to relinquishing*
2 *parental rights.*

3 (b) Establish and operate a toll-free telephone number for the
4 purpose of providing education and assistance to the public
5 regarding safe-surrender sites.

6 SEC. 5. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.

O